

United States District Court
Eastern District of California

Patrick William Banks,

Petitioner,

vs.

Mark Shepherd, et al.,

Respondents.

No. Civ. S 05-0797 MCE PAN P

Order

-oOo-

Petitioner, a state prisoner proceeding without counsel, requested leave to proceed in forma pauperis upon an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Examination of the in forma pauperis affidavit reveals petitioner is unable to afford the costs of suit. Leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

April 27, 2005, the court recommended the action be dismissed upon the ground petitioner's claims were not exhausted. May 16, 2005, petitioner filed objections and they are

1 well-taken.

2 A judge "entertaining an application for a writ of habeas
3 corpus shall forthwith award the writ or issue an order directing
4 the respondent to show cause why the writ should not be granted,
5 unless it appears from the application that the applicant or
6 person detained is not entitled thereto." 28 U.S.C. § 2243.
7 Petitioner may be entitled to relief.

8 I therefore grant petitioner's request to proceed in forma
9 pauperis and direct respondent to respond to petitioner's
10 application within 60 days. See Rule 4, Fed. R. Governing § 2254
11 Cases. An answer shall be accompanied by any and all transcripts
12 or other documents relevant to the determination of the issues
13 presented in the application. See Rule 5, Fed. R. Governing §
14 2254 Cases. Petitioner's reply, if any, shall be filed and
15 served within 30 days of service of an answer. If the response
16 to petitioner's application is a motion, petitioner's opposition
17 or statement of non-opposition shall be filed and served within
18 30 days of service of the motion, and respondent's reply, if any,
19 shall be filed within 15 days thereafter. The Clerk of the Court
20 shall serve a copy of this order together with a copy of
21 petitioner's April 22, 2005, petition for a writ of habeas corpus
22 pursuant to 28 U.S.C. § 2254 on Jo Graves, Attorney General for
23 the State of California.

24 The April 27, 2005, findings and recommendations are
25 vacated.

26 So ordered.

1 Dated: May 31, 2005.

2 /s/ Peter A. Nowinski

3 PETER A. NOWINSKI

4 Magistrate Judge